

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

SLEEPY'S, LLC,

Plaintiff,

- against -

SELECT COMFORT WHOLESALE  
CORPORATION, SELECT COMFORT RETAIL  
CORPORATION and SELECT COMFORT  
CORPORATION,

Defendants.

Civil Action No.

07 CV 4018 (Platt, J.)(Lindsay M.J.)

**[PROPOSED] ORDER GRANTING  
DEFENDANT'S MOTION TO ADOPT  
AND MODIFY THE SPECIAL  
MASTER'S MEMORANDUM &  
ORDER ON DEFENDANT'S MOTION  
TO EXCLUDE TESTIMONY AND  
EVIDENCE REGARDING  
PLAINTIFF'S SHOP REPORTS**

Having considered the moving papers and documents in the record, the Court finds that Plaintiff's shop reports are inherently untrustworthy and will improperly suggest testimony to witnesses before any foundation has been laid to show that the written statements are actually those of the testifying witness.

IT IS HEREBY ORDERED:

1. Defendant's Motion to Adopt and Modify the Special Master's Memorandum & Order on Defendant's Motion to Exclude Testimony and Evidence Regarding Plaintiff's Shop Reports is GRANTED.
2. The Special Master's Order on Defendant's Motion to Exclude Testimony and Evidence Regarding Plaintiff's Shop Reports is hereby modified to state that Plaintiff is precluded from using the shop reports to prepare witnesses for trial or to refresh witnesses' memories when testifying without first establishing at trial that the shop reports are the prior writings of those witnesses.
3. The Special Master's Order on Defendant's Motion to Exclude Testimony and Evidence Regarding Plaintiff's Shop Reports is adopted as modified.

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The Honorable Thomas C. Platt